

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6961 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO
- 1 to 5 NO

SURAT MUNICIPAL CORPORATION

Versus

RAIBEN HIRAU BEN

Appearance:

1. Special Civil Application No. 6961 of 1991
MR PRASHANT G DESAI for Petitioner No. 1
MR BN RAVAL for Respondent No. 1
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/12/2002

ORAL JUDGEMENT

1. By this petition under Article 227 of the Constitution, the petitioner has challenged the award of

the Labour Court, Surat in Reference (LCS) No.624 of 1985, whereby the respondent is ordered to be reinstated with full backwages and costs of Rs.500/-.

2. Learned counsel Mr.P.G.Desai, appearing for the petitioner, fairly conceded that no evidence was led on behalf of the petitioner in the Labour Court but, according to the respondent's own evidence, she was working as a safai kamdar under different contractor and her only grievance before the Labour Court was that she was not absorbed by the petitioner even as her co-workers were so absorbed and paid wages. It was also admitted by the respondent herself that, when the system of contract labour was discontinued, she was not absorbed by the petitioner because she had failed to produce the requisite certificate. Thus, this was not a case of illegal termination by the petitioner and the delay in the matter of her absorption was also occasioned by the respondent's own failure to produce the certificate.

3. No one has remained present for the respondent. It appears from the record that, while admitting this petition on 30.9.1991, ad-interim stay as to backwages only was granted on condition that the respondent was reinstated within two weeks. That order is supposed to have been implemented and, in view of the overall facts and circumstances, the plea to reverse the entire award was not seriously pressed. However, as far as backwages are concerned, the petitioner was right in submitting that this was not a case of illegal termination and it was not fair to saddle the petitioner with full backwages in the facts and circumstances of the case.

4. Accordingly, the petition is partly allowed and the impugned award is modified to the extent that the respondent shall not be paid any amount by way of backwages or costs. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)

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